

## Office of the Secretary, Interior

## § 4.1286

(b) The notice of appeal shall be filed within 20 days from the date of receipt of the decision. If the person appealing has not been served with a copy of the decision, such appeal must be filed within 30 days of the date of the decision.

(c) The notice of appeal shall indicate that an appeal is intended and must identify the decision being appealed. The notice should include the serial number or other identification of the case and the date of the decision. The notice of appeal may include a statement of reasons for the appeal and any arguments the appellant desires to make.

(d) If the notice of appeal did not include a statement of reasons for the appeal, such a statement shall be filed with the Board within 20 days after the notice of appeal was filed. In any case, the appellant shall be permitted to file with the Board additional statements of reasons and written arguments or briefs within the 20-day period after filing the notice of appeal.

[43 FR 34386, Aug. 3, 1978, as amended at 49 FR 7565, Mar. 1, 1984; 67 FR 4368, Jan. 30, 2002]

### § 4.1283 Service.

(a) The appellant shall serve personally or by certified mail, return receipt requested, a copy of the notice of appeal and a copy of any statement of reasons, written arguments, or other documents on each party within 15 days after filing the document. Proof of service shall be filed with the Board within 15 days after service.

(b) Failure to serve may subject the appeal to summary dismissal pursuant to § 4.1285.

### § 4.1284 Answer.

(a) Any party served with a notice of appeal who wishes to participate in the proceedings on appeal shall file an answer with the Board within 20 days after service of the notice of appeal or statement of reasons where such statement was not included in the notice of appeal.

(b) If additional reasons, written arguments or other documents are filed by the appellant, a party shall have 20 days after service thereof within which to answer. The answer shall state the

reasons the party opposes or supports the appeal.

### § 4.1285 Summary dismissal.

An appeal shall be subject to summary dismissal, in the discretion of the Board, for failure to file or serve, upon all persons required to be served, a notice of appeal or a statement of reasons for appeal.

### § 4.1286 Motion for a hearing on an appeal involving issues of fact.

(a) Any party may file a motion that the Board refer a case to an administrative law judge for a hearing. The motion must state:

(1) What specific issues of material fact require a hearing;

(2) What evidence concerning these issues must be presented by oral testimony, or be subject to cross-examination;

(3) What witnesses need to be examined; and

(4) What documentary evidence requires explanation, if any.

(b) In response to a motion under paragraph (a) of this section or on its own initiative, the Board may order a hearing if there are:

(1) Any issues of material fact which, if proved, would alter the disposition of the appeal; or

(2) Significant factual or legal issues remaining to be decided and the record without a hearing would be insufficient for resolving them.

(c) If the Board orders a hearing, it must:

(1) Specify the issues of fact upon which the hearing is to be held; and

(2) Request the administrative law judge to issue:

(i) Proposed findings of fact on the issues presented at the hearing;

(ii) A recommended decision that includes findings of fact and conclusions of law; or

(iii) A decision that will be final for the Department unless a notice of appeal is filed in accordance with § 4.411.

(d) If the Board orders a hearing, it may do one or more of the following:

(1) Suspend the effectiveness of the decision under review pending a final Departmental decision on the appeal if it finds good cause to do so;